

REMARKS

In the last Office Action,¹ the Examiner rejected claims 27, 28, and 30-34 under 35 U.S.C. § 103(a) as being unpatentable over De La Moneda et al. (U.S. Patent No. 4,445,267, “De La Moneda”) in view of that which the Examiner characterized as Applicants’ Admitted Prior Art (AAPA).

By the present Amendment, Applicants have amended claim 27 to more appropriately define their invention. Claims 27, 28, and 30-34 are currently pending in this application.

At the outset, claim 27 has been amended to recite, in part, “a first side wall is located at an end of the first gate electrode in the first direction, a second side wall is located at an end of the second gate electrode in the first direction, and the first side wall is directly physically and without the presence of additional layers therebetween connected to the second side wall above the isolation element.” Support for the amendments may be found in the Specification at, for example, Fig. 13D. In the example shown therein, a first side wall, located at an end of a first gate electrode 212, and a second side wall, located at an end of a second gate electrode 214, are in physical contact with each other, without the presence of additional layers therebetween, above an isolation element 202.

Applicants respectfully traverse the Examiner’s rejection. A *prima facie* case of obviousness has not been established.

¹ The Office Action may contain statements characterizing the related art, case law, and claims. Regardless of whether any such statements are specifically identified herein, Applicants decline to automatically subscribe to any statements in the Office Action.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). M.P.E.P. § 2142, 8th Ed., Rev. 4 (October 2005), p. 2100-134.

A *prima facie* case of obviousness has not been established because, among other things, De La Moneda and AAPA, taken alone or in combination, fail to teach or suggest each and every element recited in claim 27.

De La Moneda fails to teach, at least, that the "a first side wall is located at an end of the first gate electrode in the first direction, a second side wall is located at an end of the second gate electrode in the first direction, and the first side wall is directly physically and without the presence of additional layers therebetween connected to the second side wall above the isolation element" (emphasis added). The Examiner also notes that "De La Moneda does not specifically mention at least that "the sidewall of the first gate electrode is directly physically and with out the presence of additional layers there between"." Office Action at page 3 .

AAPA does not overcome the shortcomings of De La Moneda, because AAPA also fails to teach at least this element of claim 27. Fig. 3E of Applicants' specification shows a second gate electrode 15 is connected to a tungsten silicide film 16. However, a side wall located at the end of the second gate electrode 15 is not connected to a side wall at the **end** of the tungsten silicide film 16. Instead, the side wall at the end of the second gate electrode 15 is connected to a **mid-portion** of the tungsten silicide film 16.

Therefore, Fig. 3E fails to teach the claimed “first side wall is located at an end of the first gate electrode in the first direction, a second side wall is located at an end of the second gate electrode in the first direction, and the first side wall is directly physically and without the presence of additional layers therebetween connected to the second side wall above the isolation element,” as recited in amended claim 27.

For at least this reason, no *prima facie* case of obviousness of claim 27 has been established. Accordingly, claim 27 is allowable over the Examiner’s proposed combination of De La Moneda and AAPA, and claims 28 and 30-34 are also allowable due to their dependence from claim 27. The 35 U.S.C. § 103(a) rejection of claims 27, 28, and 30-34 should therefore be withdrawn.

In view of the foregoing, Applicants request reconsideration of the application and withdrawal of the rejection. Pending claims 27, 28, and 30-34 are in condition for allowance. Accordingly, Applicants request a favorable action.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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